Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

IN THE MATTER OF: NICHOLAS R. ROBERTS
and the BUNCOMBE COUNTY BOARD OF EDUCATION,
Petitioners,

On Petition for a Writ of Certiorari to the Supreme Court of the State of North Carolina

PETITION FOR A WRIT OF CERTIORARI

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50 pp

QUESTION PRESENTED

In *Goss v. Lopez*, 419 U.S. 565 (1975) this Court found that the Due Process Clause did not require that a public school student be provided the right to counsel in the context of a short-term suspension (less than ten days). The question presented here is whether the Due Process Clause is violated by a public school long-term-suspension procedure which fully apprises the student of the charge against him and provides the student an opportunity to be heard concerning that charge, with the one limit that the student may not be represented by an attorney at the initial investigative hearing.

PARTIES TO THE PROCEEDING

The following entity and individual are the parties to the proceeding:

The Buncombe County Board of Education is the Petitioner. The Board was the respondent in Buncombe County, North Carolina Superior Court and the appellant in the North Carolina Court of Appeals and North Carolina Supreme Court.

Nicholas Roberts is the Respondent. Roberts was the petitioner in Buncombe County, North Carolina Superior Court and the appellee in the North Carolina Court of Appeals and North Carolina Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the North Carolina Supreme Court and North Carolina Court of Appeals in this case.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals is reported at 150 N.C. App 86, 563 S.E. 2d 37. It is reproduced in Appendix A. The final order of the North Carolina Supreme Court dismissing petitioner's appeal as improvidently allowed is reported at 356 N.C. 660. It is reproduced in Appendix B.

STATEMENT OF JURISDICTION

The North Carolina Supreme Court entered its final judgment dismissing petitioner's appeal on February 28, 2003. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. XIV provides, in relevant part:

> "No state shall ... deprive any person of life, liberty, or property, without due process of law ...."

STATEMENT OF THE CASE

A. Factual Background

In the fall of 1996, Nicholas Roberts was a sophomore in the Buncombe County, North Carolina Public

School System. On October 11, 1996, Nicholas was suspended for five days by the school principal, with a further recommendation by the principal that Nicholas be suspended for the remainder of the semester. This disciplinary action was taken in response to Nicholas' behavior in English class, where he approached a female student who was seated, pushed the lower part of his body into her face, grabbed his crotch, and told her 'I'll be your partner anytime, and put "deeze nuts," in your mouth.'

The student to whom Nicholas made this comment and gesture reported the incident to an assistant principal at the high school later that same day. In response, the assistant principal spoke with several students who all gave written accounts of the incident. Nicholas was then called into the office, notified of the allegations made against him, provided an opportunity to respond to the allegations and told of the disciplinary consequences. Both of Nicholas' parents also met with school administrators that afternoon and were notified of the administration's recommendation to suspend Nicholas for the remainder of the semester.

A hearing board, which was comprised of six teachers from six different schools within the district, convened the following school day to consider the recommendation for long-term suspension. The rules concerning this procedure are found at Appendix C, page A13. This panel of educators was charged with determining whether Nicholas had violated board policy and making a recommendation to the principal and superintendent regarding what disciplinary action, if any, should be taken. School board policy dictated that the teacher from Nicholas' school act as the hearing panel convener, which included the additional authority to direct the hearing "proceedings and to control the conduct of all persons present, subject to the general direction of this procedural code. He may

limit questioning that is unproductively lengthy or irrelevant." There is no evidence that any member of the teacher panel had a legal background.

While Nicholas was not permitted to bring an attorney to the hearing, he and his parents were in attendance and were provided the opportunity to testify, to cross-examine witnesses called by administrators and to call their own witnesses. Prior to the hearing, Nicholas was provided written notice of the school rule he had violated and the conduct that constituted the violation, as well as the signed statements of all persons having information about his misconduct. At this initial hearing, seven witnesses testified, in addition to an administrator and Nicholas. Nicholas' mother was also provided an opportunity to address the hearing panel.

The hearing board voted unanimously to uphold the long-term suspension, and Nicholas appealed to the Buncombe County Board of Education. Nicholas and his parents were represented by counsel before the Board. At that hearing, the Board of Education reviewed a videotape of the hearing panel proceedings and heard oral arguments made on behalf of both parties. The school rules allowed Nicholas' attorney to request that the Board of Education hear further evidence "to avoid a substantial threat of unfairness" (Appendix C, p. A24), but no such request was made. The Board of Education upheld the suspension for the remainder of semester.

B. Proceedings Below

Pursuant to N. C. Gen. Stat. § 115C-391(c), Roberts sought judicial review, in the Buncombe County, North Carolina, Superior Court, of his long-term suspension. In an Amended Order filed on January 25, 2001, the trial judge reversed the suspension, ruling, *inter alia*, that the school rule

barring attorneys at the initial hearing board level constituted a denial of due process. The Board of Education appealed this ruling to the North Carolina Court of Appeals. The North Carolina Court of Appeals upheld the trial court, ruling:

> Under the facts of this case, where respondent sought to impose a long-term suspension and the Board Policy specifically provided for a factual hearing before the Hearing Board, we construe the Due Process Clause of the United States Constitution, applicable to the States through the Fourteenth Amendment, to require that petitioner have the opportunity to have counsel present, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident.

In re Roberts, 150 N.C. App. 86, 93 (2002). As Nicholas was allowed to confront and cross-examine witnesses and to call witnesses of his own, the Court's ruling that Nicholas' due process rights were violated rests solely on its pronouncement that the Fourteenth Amendment required that Nicholas be allowed to have counsel present at the initial hearing.

The Board of Education requested review in the North Carolina Supreme Court, and in an Amended Order dated August 15, 2002 that court granted review. However, in an Order filed February 28, 2003, reported at 356 N.C. 660, the North Carolina Supreme Court dismissed the appeal as improvidently allowed.

REASONS FOR GRANTING THE PETITION

In contrast to this Court's holding in *Goss v. Lopez*, 419 U.S. 565 (1975), the North Carolina state courts have ruled in the present matter that a right to counsel attaches to long-term

suspension proceedings, even at an initial investigative hearing. When this Court decided *Goss*, it explicitly left for another day the issue of how the Due Process Clause impacted long-term suspension procedures. In the interim, the federal courts that have considered the issue have not found that a right to counsel applies to long-term suspension or expulsion proceedings. In light of the need for guidance in this area by school boards across the country, and the glaring inconsistency between the ruling by North Carolina courts in the present case and the analysis that has been provided by other courts, the present case raises an important question of federal constitutional law that has not been, but should be, settled by this Court.

A. The *Goss* Holding

In *Goss*, this Court analyzed the impact of the Due Process clause on short-term suspensions from school. Guiding principals were noted:

> [T]he interpretation and application of the Due Process Clause are intensely practical matters and ... "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). We are also mindful of our own admonition: "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

Goss, 419 U.S. at 578.

Noting the teaching of *Grannis v. Ordean*, 234 U.S.

385, 394 (1914) that the fundamental requisite of due process of law is the opportunity to be heard, the *Goss* court held that in the context of a short-term suspension, the student must be given oral or written notice of the charges against him and, if the student denies them, an explanation of the evidence the authorities have and the opportunity to present the student's side of the story. *Goss*, 419 U.S. at 581.

The Court further explicitly ruled that the imposition of such requirements as the right to counsel was not required by the Due Process Clause:

> We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

Goss, 419 U.S. at 583.

B. The *Mathews* Holding

A year after the *Goss*, holding, this Court provided further instruction for the application of the Due Process Clause

in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 334-35. *Goss* and *Mathews* have provided the framework in which state and lower federal courts have grappled with the application of the Due Process Clause to long-term suspension procedures.

C. The Application of *Goss* and *Mathews* Indicates That The Right to Counsel Does Not Attach to Long-Term Suspensions

The courts below have found that Nicholas was entitled to have an attorney represent him at the initial meeting with the local hearing board. The Board of Education respectfully argues that it could, consistent with due process rights, devise a policy which fostered the informal review of a student's conduct, and the appropriate discipline to apply, by minimizing its adversarial nature.

The three-pronged test of *Mathews* has been described by Judge Posner of the Seventh Circuit as being "consideration of the cost of the additional procedure sought, the risk of error if it is withheld, and the consequences of error to the person

seeking the procedure." *Osteen v. Henley*, 13 F. 3d 221, 226 (7th Cir. 1993). The Board's process must be judged by the generality of cases to which it applies, and therefore if it is sufficient for the large majority of the matters that come before it, then it is constitutionally sufficient for all of them. *Walters v. Nat. Assn. Of Radiation Survivors*, 473 U.S. 305, 321, 330 (1985).

Application of this test to the present case shows that no due process violation occurred. Looking first to the cost of mandating the presence of an attorney in the discipline procedure, a major cost would be the movement away from informal fact gathering to an adversarial hearing marked by contention.

> Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance his client's cause by any ethical means. Within the limits of professional propriety, causing delay and sowing confusion not only are his right but may be his duty. The appearance of counsel for the citizen is likely to lead the government to provide one — or at least to cause the government's representative to act like one. The result may be to turn what might have been a short conference leading to an amicable result into a protracted controversy.

Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267, 1288 (1975).

In crafting its policy, the board has determined that the burden on the school administration outweighs the benefit of allowing counsel at the expulsion hearings. As was noted in *Newsome v. Batavia Local School District*, 842 F.2d 920, 925-26 (6th Cir. 1988), school boards and administrators are

charged with a variety of responsibilities that are critical to the effective operation of our public schools. These include, but most definitely are not limited to, meting out punishment for violations of school rules, hiring and firing of teachers and other school personnel, planning curricula, meeting the dietary and health needs of the student population, supplying and maintaining school buildings, and providing extra-curricular activities. Id. Moreover, the school systems carry out these duties within the strict confines of an increasingly tighter budget. Id. Furthermore, to saddle school boards and administrators with the burden of overseeing a quasi-judicial proceeding is to require of them that which they are ill-equipped to perform. Id.

> "The detriment that will accrue to the educational process in general by diverting school board members' and school administrators' attention from their primary responsibilities in overseeing the educational process to learning and applying the common law rules of evidence simply outweighs the marginal benefit that will accrue to the fact-finding process by allowing [students' attorneys to participate in expulsion meetings]."

Id.

If it is determined that due process requires that students be represented by an attorney in expulsion meetings, it is likely that school systems will be forced to pay legal counsel for representation at the meetings, as well, and train those conducting the hearing in the intricacies of the applicable substantive and procedural law. "When due process converts agency processes into trial-type processes, decisional responsibility tends to shift toward those competent in those processes (lawyers) and to move away from those competent

with respect to substance [in this case, teachers and school administrators]." Alfred C. Aman, Jr., & William T. Mayton, Administrative Law 180 (1992).

Under *Mathews*, these costs are to be balanced against the risk of error in the normal case if the right to counsel is not granted. Courts considering this risk have noted that school administrators are in a position to know, or have access to records that will reveal, a student's disciplinary history, and whether the accuser and accused have had a past relationship that throws doubt on the accusation. *Newsome v. Batavia Local School District*, 842 F.2d 920, 925-26 (6th Cir. 1988). This has lead courts to express comfort with school discipline fact finders relying on hearsay evidence from school administrators, instead of requiring witnesses to appear for cross-examination by attorneys. *Boykins v. Fairfield Board of Education*, 492 F.2d 697, 701-02 (5th Cir. 1974). Given the relationship between school and community, schools lack an incentive to improperly expel students. *Osteen v. Henley*, 13 F. 3d 221, 226-(7th Cir. 1993).

In the present case, the mere exclusion of an attorney from the initial local hearing did not create any significant danger of error. That section of the Board policy (Appendix C,. pp. A22-23) applies only to the local hearing board's initial review of the principal's recommendation. Pursuant to that section, at the local review board's hearing, the student may bring an adult other than his or her parents to the proceeding. The non-parent may represent the student if the parents are not present; the non-parent's role is limited to that of an advisor, with no other function in the proceeding, if the parents are present. The one limitation this policy places on the non-parent is that this person cannot be an attorney at law. This is the only point in the policy where an attorney is not allowed. An attorney at law may represent the student before the Board of

Education (as happened here), as well as directly contact the school principal and superintendent.

The Board of Education's policy (found at Appendix C) as a whole allowed Nicholas to fully develop his response to the evidence gathered by the principal. The policy required the principal to state, in writing, the ground for the proposed suspension. The student and his parents were entitled, prior to the local board hearing, to review the principal's written statement and any other evidence gathered by the principal. The student and the parents were allowed, both before the review board and the Board of Education, to respond to these statements without providing any prior notice of what their response would be. The student and his parents were entitled to confront any witness at the review board hearing and call their own witnesses, by subpoena if necessary. If the matter were appealed to the Board of Education (as occurred here), the student and his parents were allowed the full benefit of an appearance by an attorney at law (as happened here). Thus, the Board of Education was given the benefit of the attorney's interpretation and argument of the evidence.

The only opportunity not allowed Petitioner here was to have the attorney directly cross-examine the witnesses who testified at the hearing board stage. However, had Petitioner wished to do so, he could have remedied this by requesting that the Board hear further evidence "to avoid a substantial threat of unfairness." (Appendix C, p. A24). Here, Petitioner and his attorney chose not to avail themselves of this right under the policy.

In light of the above, it is clear that the risk of error was not significantly increased by not allowing attorneys into the local hearing. By no means does the Board of Education minimize the importance of accuracy in the school discipline

process. However, in light of the small gain, if any, in accuracy that would be occasioned by the interjection of a right to counsel, there is insufficient justification for turning this process into a court proceeding.

D. The Federal Courts That Have Applied *Goss* and *Mathews* to Long-Term Suspensions and Expulsions Have Not Found That The Due Process Clause Requires A Right To Counsel

Multiple courts across the country have uniformly held that under *Goss* and *Mathews* there is no right to legal representation at student disciplinary hearings. In *Osteen v. Henley*, 13 F.3d 221 (7t" Cir. 1993) the court held that a university student had no constitutional right to counsel at student disciplinary hearing that led to his expulsion. Writing for the court, Judge Posner explained

> To recognize such a right would force student disciplinary proceedings into the mold of adversary litigation. The university would have to hire its own lawyer to prosecute these cases and no doubt lawyers would also be dragged in — from the law faculty or elsewhere — to serve as judges. The cost and complexity of such proceedings would be increased, to the detriment of discipline as well as of the university's fisc. Concern is frequently voiced about the bureaucratization of education, reflected for example in the high ratio of administrative personnel to faculty at all levels of American education today. We are reluctant to encourage further bureaucratization by judicializing university disciplinary proceedings....

Osteen, 13 F. 3d at 225.

Similarly, in *Gorman v. Univ. of Rhode Island*, 837 F.2d 7 (lst Cir. 1988) the 1st Circuit applied *Goss* and *Mathews* to an expulsion from a public university, and considered whether a right to counsel attached to the expulsion proceeding. The court warned:

> Although fairness in disciplinary procedures serves the goals of both students and schools alike, the burdens imposed on the schools may become unjustifiable. School administrators and courts recognize that "procedural requirements entail the expenditure of limited resources, [and] that at some point the benefit to individuals from an additional safeguard is substantially outweighed by the cost of providing such protection. . . ." Friendly, Some Kind of Hearing, 123 U.Pa.L.Rev. [1267,] 1276. Hence, it is no exaggeration to state that the undue judicialization of an administrative hearing, particularly in an academic environment, may result in an improper allocation of resources, and prove counter-productive.

Gorman, 837 F. 2d at 14-15. Though the court found that other aspects of the school's procedure had violated due process, the court ruled that the right to counsel did not apply to the expulsion procedure.

Courts reaching the same conclusion as *Osteen* and Gorman include *Hall v. Med. Coll. of Ohio at Toledo*, 742 F.2d 299 (6th Cir. 1984) (holding that there is no right to counsel at a medical school disciplinary hearing in which plaintiff was dismissed for academic dishonesty); *Greenhill v. Bailey*, 519 F.2d 5 (8th Cir. 1975) ("[T]he presence of attorneys or the imposition of rigid rules of cross-examination at a hearing for a student . . . would serve no useful purpose, notwithstanding that the dismissal in question may be of permanent duration.");

Wasson v. Trowbridge, 382 F.2d 807 (2nd Cir. 1967) (noting that where the proceeding was non-adversarial and the government was not represented by counsel, student expelled from the U.S. Merchant Marine Academy was not entitled to counsel at the disciplinary hearing); *Dixon v. Alabama State Bd. of Educ.* 294 F.2d 150 (5th Cir. 1961) (finding no right to counsel at university disciplinary hearing, and further stating that "'a full dress judicial hearing, with the right to cross-examine witnesses" is not required because "such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out"); *Jaksa v. The Regents of the Univ. of Mich.*, 597 F. Supp. 1245 (E.D. Mich. 1984) (explaining that, in a student disciplinary hearing, there is no right to counsel, no right to cross-examine your accuser, no right to a verbatim transcript of the proceedings, and no right to a detailed statement from the hearing panel detailing the reasons behind its decision).

Prior to the present decision by the North Carolina courts, since the Supreme Court decision in *Mathews*, there has been no decision holding that due process mandates that students have the opportunity for attorney representation at the evidentiary hearing. Only one court has identified an exception to this rule, and that was when the student was also facing potential criminal prosecution arising out of the same incident. *See Gabrilowitz v. Newman*, 582 F.2d 100 (1st Cir. 1978). It is also worth noting that the dissent in *Gabrilowitz* stressed that the United States Supreme Court rejected this very argument in the context of prison disciplinary hearings in *Baxter v. Palmigiano*, 425 U.S. 308, 315 (1976).

E. The Present State Court Holding Differs From the Analysis of the Fourth Circuit; Thus, Cases Will Be Decided Differently Depending on Whether They Are Filed in State or Federal Court.

In an unpublished holding, the Fourth Circuit has ruled that the right to counsel does not attach to the long term suspension of an eighth grade student. In that case, *Ratner v. Loudoun County Public Schools*, 16 Fed Appx. 140, 2001 WL 855606 (4th Cir. 2001) the student challenged his long-term suspension from October 1999 through the end of the semester in February 2000. One of the student's challenges was that the school's suspension process denied him due process. In the Fourth Circuit's opinion the court noted this challenge and denied it, holding that the school's process comported with *Goss*. *Ratner*, 16 Fed. Appx. at 142. The unreported decision of the federal district court reveals that part of the student's claim was the denial of right to counsel.

In the present case, the process also meets the test of *Goss*, but the state courts have now added the further requirement of a right to counsel, even at an initial investigative hearing. If the state court holding stands, determination of the impact of the due process clause on long term suspensions in North Carolina will rise and fall on whether the matter is litigated in state court or federal court. This undesirable result yields a further reason for review by this Court, and the establishment of clear guidelines for the application of the Due Process Clause to long-term suspensions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A

NO. COA01-557

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

IN THE MATTER OF: NICHOLAS R. ROBERTS and the BUNCOMBE COUNTY BOARD OF EDUCATION

Appeal by respondent from order entered 29 January 2001 by Judge C. Walter Allen in Buncombe County Superior Court. Heard in the Court of Appeals 20 February 2002.

TYSON, Judge.

The Buncombe County Board of Education ("respondent") appeals from an order reversing its decision to suspend Nicholas R. Roberts ("petitioner") from school for the remainder of the Fall 1996 semester.

I. Facts

On 11 October 1996, petitioner was a sophomore at A.C. Reynolds High School in Buncombe County, North Carolina. While in his first period English class, petitioner was preparing to play a board game. When petitioner asked the teacher if he could be paired with two particular classmates, another student, Chris Meeks ("Meeks") stated "Hey Nick! Juanita [Plemmons] wants to be your partner." Petitioner then walked up to the table where Juanita Plemmons ("Plemmons") was seated, pushed the lower part of his body into her face, grabbed his crotch, and told her "I'll be your partner anytime,

and put 'deeze nuts' in your mouth." Petitioner then walked away to play the board game at another table.

Plemmons did not hear petitioner's statement. Plemmons stated that because she was embarrassed upon seeing petitioner grab his crotch, she closed her eyes, put her head down, and covered her ears with her hands. Three students who were seated nearby, Meeks, Adam Lowe ("Lowe"), and John Hefner ("Hefner"), informed Plemmons of the statement made by petitioner. Later that afternoon, Plemmons reported the incident to Assistant Principal Richard Pierce ("Pierce") who conducted an investigation by taking the statements of several students. Meeks, Lowe, and Hefner all confirmed the incident as reported by Plemmons. Four other students stated that although they were seated near Plemmons, they neither saw nor heard petitioner make any offensive gestures or comments.

After obtaining the student's statements, Pierce called petitioner into his office and informed him of the complaint against him. When asked his version of the events, petitioner admitted that he walked over to the table where Plemmons was seated and said that he would like to be her partner, but petitioner denied making any offensive gestures or statements. Later, however, petitioner admitted grabbing his crotch and saying "deeze nuts," but he claimed that the gesture and statement was directed toward Meeks, who had previously insulted him. According to petitioner, "deeze nuts" was an expression commonly used by the students and was similar to "kiss my butt."

Following his investigation, Pierce brought the incident to the attention of Principal Ronald L. Dalton ("Dalton"). Dalton reviewed the statements and concluded that petitioner

violated Board Policy 461 regarding sexual harassment which provides in pertinent part:

> Sexual harassment of students is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
>
> . . . .
>
> (3) The harassment has a purpose or effect of unreasonably interfering with an individual's academic performance or creating an intimidating, hostile, or offensive learning environment.

Dalton suspended petitioner for five days, with a recommendation to the Reynolds District Hearing Board ("Hearing Board") that he be suspended through the end of the school semester. Dalton notified petitioner's parents of this decision and recommendation by letter dated 11 October 1996.

A hearing was conducted before the Hearing Board on 14 October 1996. The Hearing Board adopted Dalton's recommendation, suspending petitioner for the duration of the 1996 Fall semester. The Superintendent for the Buncombe County School System approved the recommendation that petitioner be suspended for the remainder of the semester. Petitioner appealed the decision to respondent pursuant to N.C.G.S. § 115C-391(e). On 7 November 1996, respondent conducted a review hearing and made the following determination regarding petitioner's conduct:

> The Board of Education does not believe that [petitioner's] behavior was intended to be "sexual harassment," however, the Board feels that his actions and words were both vulgar and obscene, and had the

> effect of creating an intimidating and offensive learning environment.

Respondent issued a letter, dated 22 November 1996, to petitioner's mother upholding the suspension for the duration of the school semester.

Petitioner filed a petition for judicial review with the Buncombe County Superior Court on 20 December 1996, pursuant to N.C.G.S. §§ 115C-391(e), 150B-43, and 150B-45. The superior court entered a judgment reversing respondent's decision on 28 October 1997. Respondent appealed to this Court. In the prior opinion of this Court, filed 6 April 1999, we reversed the decision and remanded for the entry of an order setting forth the standard of review applied. The superior court, on remand, entered an amended order on 29 January 2001 reversing the decision of respondent. Respondent appeals.

II. Issues

The controlling issues raised on appeal are whether: (1) the superior court erred in concluding that Board Policy prohibiting an attorney's presence at the Hearing Board constitutes a denial of due process and (2) the superior court applied an incorrect remedy in reversing the decision.

III. Standard of Review

The decision of the local board of education in disciplining any student may be appealed to the superior court of the county where the local board made its decision in accordance with Article 4 of Chapter 150B of the General Statutes. N.C. Gen. Stat. § 115C-391(e) (1999). The standard of review on appeal from a decision of a local board of

education is set forth in N.C.G.S. § 150B-51(b) which provides that the court reviewing a final decision may:

> reverse or modify the agency's decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions or decisions are: (1) In violation of constitutional provisions; (2) In excess of the statutory authority or jurisdiction of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Unsupported by substantial evidence . . . in view of the entire record as submitted; or (6) Arbitrary, capricious, or an abuse of discretion.

N.C. Gen. Stat. § 150B-51(b) (2000).

The proper standard for the superior court's judicial review "depends upon the particular issues presented on appeal." *Amanini v. North Carolina Dep't of Human Resources*, 114 N.C. App. 668, 674, 443 S.E.2d 114, 118 (1994). When the petitioner contends that the decision of the agency, here the local school board, was unsupported by the evidence or was arbitrary or capricious, then the reviewing court must apply the "whole record" test. *In re McCrary*, 112 N.C. App. 161, 165, 435 S.E.2d 359, 363 (1993). "The 'whole record' test requires the reviewing court to examine all competent evidence (the 'whole record') in order to determine whether the agency decision is supported by 'substantial evidence.'" *Amanini*, 114 N.C. App. at 674, 443 S.E.2d at 118. "Substantial evidence is that which a reasonable mind would regard as adequately supporting a particular conclusion." *Walker v. North Carolina Dep't of Human Resources*, 100 N.C. App. 498, 503, 397 S.E.2d 350, 354 (1990) (citation omitted). When the petitioner argues that the decision of the agency

violates a constitutional provision, the reviewing court is required to conduct a *de novo* review. *In re Ramseur*, 120 N.C. App. 521, 526, 463 S.E.2d 254, 257 (1995).

As to appellate review of a superior court order regarding an agency decision, "the appellate court examines the trial court's order for error of law. The process has been described as a twofold task: (1) determining whether the trial court exercised the appropriate scope of review and, if appropriate, (2) deciding whether the court did so properly." *Amanini*, 114 N.C. App. at 675, 443 S.E.2d at 118-19 (citations omitted).

IV. Due Process

Here, petitioner alleged that respondent's decision is based on an error of law in that his state and federal constitutional rights of Due Process were violated when he was denied legal representation at the Hearing Board. When petitioner alleges that the agency's decision, here the local school board, is based on an error of law, the proper review is *de novo* review. *Ramseur*, 120 N.C. App. at 526, 463 S.E.2d at 257. "De novo review requires the court to "'consider a question anew, as if not considered or decided by the agency previously. . . ." and to "make its own findings of fact and conclusions of law . . ." rather than relying upon those made by the agency. *Jordan v. Civil Serv. Bd. of Charlotte*, 137 N.C. App. 575, 577, 528 S.E.2d 927, 929 (2000) (citation omitted).

The superior court's amended order states that its review was "of the whole record de novo." While "whole record" and *de novo* are separate tests to be applied upon differing issues, the superior court entered a finding of fact that pursuant to Board Policy 460 "Petitioner's attorney was denied access to the hearing room to advise and counsel the Petitioner

or his parents. A non-parent adult is permitted in the hearing room upon request of the Petitioner." The superior court reviewed Board Policy 460 which provides in pertinent part:

> Adult Representation in Addition to or in Lieu of Parents. If the parents cannot be present or if the student or his parents think his interests can be protected better by the presence of another adult in addition to the parents, the student may bring another adult to the hearing. If the parents are present, the non-parent adult may advise the student, but he may not examine witnesses, make any statement, or in any way actively represent the student before the board. . . . The non-parent adult may not be an attorney.

The superior court then concluded that "[t]he failure of the Reynolds District Hearing Board to allow the mere presence of the Petitioner's attorney as a non-parent adult and the provision of the Board Policy prohibiting an attorneys presence under any circumstance constitutes a denial of due process to the Petitioner . . . ." We conclude that the superior court utilized the correct standard of review. *See Sun Suites Holding v. Town of Garner*, 139 N.C. App. 269, 273, 533 S.E.2d 525, 528 (2000) (more than one standard of review may be used if required, but the standards are to be applied separately) (citations omitted). We review *de novo* the propriety of respondent's policy and the superior court's reversal.

Respondent argues that the superior court's conclusion is erroneous and relies on *Wimmer v. Lehman*, 705 F.2d 1402 (4th Cir. 1983), to support its argument that petitioner was not denied due process. However, *Wimmer* is distinguishable from this case. In *Wimmer*, the petitioner, a cadet at the Naval Academy, was an adult. Even though the petitioner was required to make his own arguments and cross-examine the

witnesses, he was permitted to have his attorney present at the hearing. In contrast, petitioner in the present case was a high school student, a minor, and was not permitted to have counsel present at the evidentiary hearing before the Hearing Board.

In *Matthews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 33 (1976), the United States Supreme Court set forth three factors to be considered in determining what process is due when an individual is faced with the deprivation of a property interest:

> [F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

The North Carolina Constitution provides that "[t]he people have a right to the privilege of education . . . ." (Article 1, § 15). The United States Supreme Court has stated that a student facing suspension has a property interest that qualifies for protection under the Due Process Clause of the Fourteenth Amendment. *Goss v. Lopez*, 419 U.S. 565, 576, 42 L. Ed. 2d 725, 735-36 (1975) (citations omitted). "A student's interest in obtaining an education has been given substantive and procedural due process protection." *Warren County Bd. of Educ. v. Wilkinson*, 500 So.2d 455, 459 (Miss. 1986) (citing *Plyler v. Doe*, 457 U.S. 202, 217, 72 L. Ed. 2d 786 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 500, 98 L. Ed. 2d 884 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 69 L. Ed. 1070

(1925); *Meyer v. Nebraska*, 262 U.S. 390, 400, 67 L. Ed. 1042 (1923)).

"The student's interest is to avoid unfair or mistaken exclusion from the educational process. . . ." *Goss*, 419 U.S. at 579, 42 L. Ed. 2d at 737. We acknowledge that the State has a substantial interest in maintaining security and order in the schools. "[O]ur schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device." *Id.* at 580, 42 L. Ed. 2d at 738.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution is applicable to long-term suspensions. *See Pervis v. LaMarque Ind. School Dist.*, 466 F.2d 1054 (5th Cir. 1972) (due process applicable to indefinite suspensions); *Sullivan v. Houston Ind. School Dist.*, 475 F.2d 1071 (5th Cir. 1973) (due process applicable to the addition of a 30-day suspension to a 10-day suspension).

In the present case, petitioner was subjected to a long-term suspension from school, for the remainder of the Fall 1996 semester, based on the reports of other students. The facts and the nature of the conduct were all disputed. For these very same reasons, the Court in *Goss* stated that "[t]he risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process." *Goss*, 419 U.S. at 580, 42 L. Ed. 2d at 738. The Hearing Board and respondent's claim that petitioner's conduct constituted harassment turned upon a factual adjudication before the Hearing Board. Respondent concedes that the better practice would be to permit attorney

representation before the Hearing Board. We agree. The protections of due process require that petitioner be apprised of the evidence received and given an opportunity to explain or rebut it. *See Givens v. Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972) (where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, modern courts have held that due process requires notice; a full hearing; the right to examine the evidence, the witnesses, and the right to present evidence; and the right to be represented by counsel.)

Under the facts of this case, where respondent sought to impose a long-term suspension and the Board Policy specifically provided for a factual hearing before the Hearing Board, we construe the Due Process Clause of the United States Constitution, applicable to the States through the Fourteenth Amendment, to require that petitioner have the opportunity to have counsel present, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. *Id.* We hold that respondent's decision for long-term suspension of petitioner was affected by error of law.

V. Remedy

Respondent argues that even if the findings and conclusions of the superior court are upheld, the appropriate remedy was to remand the matter to the Board of Education for further proceedings. We disagree.

N.C.G.S. § 150B-51(b) specifically states that the court reviewing the final decision may reverse the agency's decision "if the substantial rights of the petitioners may have been prejudiced . . . ." N.C. Gen. Stat. § 150B-51(b). This argument is overruled.

VII. Conclusion

We hold that petitioner's substantial rights have been violated. Under the facts of this case petitioner's due process rights were violated. We need not address respondent's remaining assignments of error. We affirm the reversal of respondent's decision by the superior court.

Affirmed.

Judges WYNN and TIMMONS-GOODSON concur.

APPENDIX B

IN THE SUPREME COURT OF NORTH CAROLINA

No. 290PA02

FILED: 28 FEBRUARY 2003

IN THE MATTER OF: NICHOLAS R. ROBERTS and the BUNCOMBE COUNTY BOARD OF EDUCATION

On discretionary review pursuant to N.C.G.S. § 7A-31 and on appeal of right of a constitutional question pursuant to N.C.G.S. § 7A-30(1) to review a unanimous decision of the Court of Appeals, 150 N.C. App. 86, 563 S.E.2d 37 (2002), affirming an amended order entered 29 January 2001 by Judge C. Walter Allen in Superior Court, Buncombe County. Heard in the Supreme Court 5 February 2003.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED; APPEAL DISMISSED EX MERO MOTU.

APPENDIX C

RELEVANT EXCERPTS FROM BUNCOMBE COUNTY BOARD OF EDUCATION POLICY # 460, "PROCEDURAL CODE FOR DEALING WITH SERIOUS STUDENT MISCONDUCT

I.. General Provisions

A.. Coverage

1. This code of procedure deals with discipline problems other than the ordinary classroom discipline; it covers only those disciplinary matters serious enough to be dealt with by the principal or his designee. The teacher should make every effort to handle personally the usual problems of maintaining classroom discipline before involving the principal. State Law, G.S. 115C-391, places upon the teachers and principals the responsibility and gives them the authority to maintain good order and discipline in their schools.

Alleged misconduct shall be dealt with by the principal or his designee:

- Whenever a teacher considers a problem of classroom discipline to be so serious as to warrant the principal's attention; or,

- Whenever the alleged misconduct constitutes a violation of the rules that govern serious misconduct; or

- Whenever the principal deems it advisable that he deal personally with the misconduct.

2. Any of the following actions occurring on the school grounds, off of the school grounds at a school activity, function or event, or while waiting for, riding or leaving a school bus shall constitute Serious Misconduct and be subject to the provisions of this policy.

- Intentional disruption of any lawful mission, process or function of the school.

- Intentional damage or destruction of school property.

- Intentional damage or destruction of private property.

- Intentional assault on a school employee.

- Intentional physical abuse of a student or other person not employed by the school.

- Knowing possession of weapons and/or dangerous instruments.

- Knowing possession, use, or transmission of or being under the influence of any controlled substance (as defined under North Carolina General Statute 90-95), alcoholic

beverage or intoxicant of any kind, (excepting medicines accompanied by a physician's order. Reference Policy #545 *Administering Medicines to Students* and Policy #470 *Drug and Alcohol Use*).

- Violations of school rules and other behavior determined by the principal or his designee to impede the mission, process or function of the school.

3. A student who brings a firearm, bomb or powerful explosive device to school, as defined by the Gun-Free Schools Act, shall be subject to suspension for at least one year. The provisions of this policy regarding long-term suspension shall apply.

4. The law, G.S. 115C-112, and procedures regarding children with special needs shall be followed whenever a child with special needs engages in serious student misconduct.

B. Principal's Investigation

The principal shall investigate and hear all available accounts dealing with the misconduct. The student shall be encouraged to raise any defense he thinks relevant. The principal should question, if possible, witnesses suggested by the accused student. If the principal feels that all information is not available, he should postpone disciplinary action for a reasonable time until such evidence is available.

C. Limitations on Principal's Power to Suspend or Request a Hearing

If, upon investigation, the principal decides to take disciplinary action, he must investigate and take action on all alleged misconduct known to him at that time. This action may be up to a ten day suspension.

. . . .

III. Long-Term Suspension and Expulsions

A. Initiating Long-Term Suspensions or Expulsions

1. Decision to seek over ten (10) days suspension or expulsion. If, after his investigation, the principal decides that a penalty over ten (10) days is warranted, he must notify the convener of the Hearing Board and ask that a hearing date be set. The principal must decide to do this and ask for long-term suspension within five (5) days after he learns of the misconduct.

2. Sanction Before Hearing The procedure described in 1. above does not affect the principal's authority to involve a short-term suspension or other sanction after his investigation or he may choose to take no action other than to turn the entire matter over to the Hearing Board.

B. Notice

Whenever the principal seeks a long-term suspension or expulsion, he must give written notice to the student and his parents and the Superintendent no later than the end of the school day following the day of the conclusion of the

principal's investigation of the alleged misconduct. The notice shall contain:

1. The rule allegedly violated and the acts of the student thought to have violated the rule and a summary of the evidence against him; and,

2. Notification that the parents have the right to waive the hearing, in which case the principal shall impose the penalty within the limits of his statutory authority; and,

3. A tentative time and place for the hearing as scheduled by the convener of the Hearing Board; and,

4. A description of the hearing procedures and the available appeals process, or a copy of this policy; and

5. Notification that written statements about the misconduct and the student's disciplinary records are available for those concerned in the hearing; and,

6. Notification that before long-term suspension can be invoked, the student has a right to a hearing, which may be waived if the student and his parents agree to forego the hearing by furnishing the principal a signed statement to that effect. The student and his parents will have twenty four (24) hours after receipt of this notice to decide whether they will waive the hearing. If a statement is not received from the parents, the hearing schedule will be observed. However, in case of serious misconduct, upon the recommendation of the principal, the right to waive may not be exercised by the parents. The Hearing Board will convene and hear the case.

C. Scheduling the Hearing

The hearing should be scheduled at the discretion of the Hearing Board by the end of the fifth day of suspension of the student. The convener of the Hearing Board may schedule a different date if good and sufficient cause is shown by either the student or the principal.

D. Group Hearing

When more than one (1) student is charged with violating the same rule and the facts are basically the same for all students, a single hearing will be conducted for them.

If during the hearing, the convener of the Hearing Board thinks a student's interest will be prejudiced by the group hearing, he may order a separate hearing for that student.

E. Witness Statements

The principal shall make available in his office at least two (2) school days before the hearing the signed statements of all persons on whose information the charge against the student is based. These statements may be examined and copies may be obtained by the student, parents, and representative. If the principal later receives any further information that will be employed at the hearing, he must notify the student of it and make copies available before the hearing. For example, if the student is charged with consistently failing to follow a teacher's direction, the consistent nature of the failures must be specifically described.

Likewise, the student shall file with the principal before the hearing, signed statements of any witnesses who have defensive information the student wishes considered at the

hearing, including his own statement of defense if he chooses to make one. These statements shall set out with some particularity the information known to the persons making them.

F. Availability of the Student's Previous Disciplinary Records

Besides having access to the written statements that form the basis of evidence against the student, his parents shall have access to his disciplinary and academic record.

G. Composition of the Hearing Board

1. Hearing Board Make-up. The Hearing Board will be made up of one faculty member from each school in the high school attendance area involved (administrators are excluded). (Each school will elect/name two teachers to serve in this capacity. The two may alternate appearances on the Hearing Board, or one may serve as a member and one as an alternate). In the absence of a board member or alternate, the convener shall have the authority to appoint a hearing board member for the school in which the absence occurs for the hearing.

2. Convener. The convener shall be the Hearing Board member who represents the involved student's school. The convener has no vote except to break a tie vote.

The convener has all other rights and duties of a Hearing Board member as well as the following specific duties and powers:

(a) He schedules the hearing at a specified date, time, and place. He has the

authority to postpone the date and time or change the place for good cause.

(b) He assures the presence of a full board at the hearing.

(c) He is available before the hearing to answer any question that the student (or his parent or representative) may have about the nature and conduct of the hearing.

(d) He has full charge of the hearing and has authority to direct its proceedings and to control the conduct of all persons present, subject to the general direction of this procedural code. He may limit questioning that is unproductively lengthy or irrelevant.

(e) He writes the Hearing Board's findings and recommendations for action. He may delegate this responsibility to another member of the board.

(f) He transmits the board's written findings and recommendations to the Superintendent and principal immediately after the hearing.

3. Conflict of Roles. Anyone who has had direct contact with the student's alleged misconduct or who will probably give testimony to the Hearing Board should not serve as a member of the Hearing Board.

H. Conducting the Hearing

1. Closed Hearing. The hearing may only be attended by the hearing board members, the Superintendent of Schools, the principal, the student, the parents, and the student's representative. Witnesses shall be present only when they are giving information to the board. The student may be excluded at the discretion of the board with the concurrence of the student's parents (or the student's representative when he acts in the place of the parents) at times when his psychological or emotional problems are being discussed. No one may be present with the board during its deliberations.

2. Student May Remain Silent. The student may speak in his own defense and may be questioned on his testimony, but he may choose not to testify and in such case he shall not be threatened with punishment or later punished for refusal to testify

3. Record of the Hearing. The Hearing Board shall provide for making a record of any information orally presented to it at the hearing. Statements and other written matter presented to the board should be kept on file by the principal.

4. Principal's Submission of Statements and Records. It shall be the duty of the principal to submit to the Hearing Board the signed statements of all persons having information about the student's misconduct. These shall be the same statements that previously have been available to the student in the school office and those statements that the student submitted to the office. He also shall submit a copy of subsections 1. and 2. of the notice given to the students, parents, and Superintendent under Section III. B. Further, upon the request of the board, the principal shall submit to the Hearing Board the student's disciplinary and academic records.

If the principal or the Hearing Board deems it necessary, the information contained in these records shall be explained and interpreted to the board by a person trained in their use and interpretation. All records and statements submitted to the board shall remain confidential.

5. Use of Witnesses. The hearing shall consist of a review of the statements and records submitted by the principal under Section 4. above; but if the principal, the student, or the convener requests that any witness appear in person and answer questions, then that witness will be called.

6. Examination of Witnesses. Members of the Hearing Board, the principal, the student and his parents may question witnesses, (witnesses include the principal and the student) about any matters logically relevant to the charge against the student and the proper disposition of the matter.

7. Role of the Parents. The parents shall be present at the hearing and shall have an opportunity to make a statement to the board of their feelings about the proper disposition of the case and to answer questions. Any statements they make need not be filed with the principal before the hearing. They should be able to advise the student during the hearing. They may also question the witnesses.

Under extreme conditions and at the discretion of the Hearing Board, a different adult may appear instead of the parent(s). Should the parent refuse to appear, the case will be referred to the Superintendent and the Chairman of the Board of Education.

8. Adult Representation in Addition to or in Lieu of Parents. If the parents cannot be present or if the student or his parents think his interests can be protected better by the

presence of another adult in addition to the parents, the student may bring another adult to the hearing. If the parents are present, the non-parent adult may advise the student, but he may not examine witnesses, make any statement, or in any way actively represent the student before the board. If the parents cannot be present, the non-parent adult has all the rights of a parent before the hearing board as provided in Subsection 7. The non-parent adult may not be an attorney.

I.. Compelling the Appearance of Witnesses

If the Hearing Board finds it necessary to have a witness appear before it and the witness refuses after being requested to appear, the Hearing Board may notify the Superintendent and the Chairman of the Board of Education of this case and the Board of Education may issue a subpoena ordering the witness to appear.

J. Disposition of the Case

1. Actions of the Hearing Board. The Hearing Board shall reach its decision on whether the student violated a rule on serious misconduct by a majority vote and report its recommendation to the principal and Superintendent. The decision should be based solely on the evidence presented at the hearing, and should state substantial findings of facts on which the board's decision rests.

When some misconduct is found, even if a rule of serious misconduct has not been violated, the Board's report shall include a recommendation to the Superintendent or the principal concerning what action, if any, should be taken with respect to the student. It may range from no action through the entire scope of counseling attempts and possible penalties including suspension for the remainder of the school year and

expulsion. The recommendation should explain the reasons for the particular action recommended to the Superintendent or the principal.

Dissenting Hearing Board members' views should be noted if the dissenting members so request.

2. Actions of the Superintendent /Principal. If the Superintendent/ Principal follows the recommendation of the Hearing Board, he shall notify the parents of the student of the decision.

If the Superintendent/ Principal directs a sanction other than recommended by the Hearing Board, he shall send to the parents of the student and to the convener an explanation of why he thought the recommended sanction to be inappropriate.

K. Appeal

The student may appeal to the Buncombe County Board of Education a penalty by the Superintendent by giving notice of appeal within five (5) days of receiving the Superintendent's decision. The penalty need not be postponed pending the outcome of the appeal. Such an appeal must be on the record made in the hearing and new evidence will be admitted only to avoid a substantial threat of unfairness.

L. Chronic Offender

If a student has been suspended for several short-term suspensions, the principal may request the Hearing Board to review this student's records.

IV. Definition of Terms

- *Appeal* - A procedure for review of the Hearing Board's decision.

- *Closed Hearing* - A hearing not open to whoever might want to attend but only to the Hearing Board, the Superintendent of Schools, the principal, the student, his parents and his adult representative.

- *Convener* - The chairman of the Hearing Board.

- *Expulsion* - The denial to a student of the right to attend school and to take part in any school activity for an indefinite period of time. Expulsion is the most severe penalty available and should be utilized only in extraordinary situations and in accordance with G.S. 115C-391.

- *G.S.* - General Statutes of North Carolina.

- *Hearing* - The examination of accounts of misconduct and the making of recommendations as to proper disciplinary action by the Hearing Board. A hearing is necessary before any punishment more severe than a ten (10) day suspension may be applied to a student unless the student waives the hearing.

- *Hearing Board* - The group of persons selected to serve for a school year who hears the accounts, testimony and recommendations at the hearing and make a report including a recommendation for action to the Superintendent.

- *Long-Term Suspension* - The denial to a student of the right to attend school and to take part in any school

function for a period of time in excess of ten (10) school days, but not exceeding the time remaining in the school year.

- *Notice* - The written statement the principal must give to the student and his parents whenever he seeks a long-term suspension.

- *Parents* - The student's parents or his legal guardian.

- *Principal* - The school employee bearing that title or a school administrator designated by him to carry out any or all of the functions assigned to the principal in this code.

- *Principal's Investigation* - The inquiry made by the principal upon hearing of the misconduct, to determine the student's culpability, and to decide on the proper disciplinary action.

- *Representative* - An adult serving in place of or in addition to the parents to advise or otherwise assist the student before the Hearing Board.

- *Serious Student Misconduct* - The misconduct described in this policy, as well as other student misconduct of a serious nature.

- *Short-Term Suspension* - The denial to a student the right to attend school or to take part in any school function for any period of time up to ten (10) school days.

- *Summary Suspension* - A principal's order under his authority in Number 1 of Section B that a student immediately leave the school grounds.

- *Witness* - Any person giving information to the Hearing Board at a hearing.